

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

November 8, 2007

\_\_\_\_\_  
No. 06-41708  
Conference Calendar  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

VALENTIN LOPEZ-ALVAREZ

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:06-CR-574-ALL  
\_\_\_\_\_

Before KING, BARKSDALE, and DENNIS, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Valentin Lopez-Alvarez raises arguments that are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998), which held that 8 U.S.C. § 1326(b)(2) is a penalty provision and not a separate criminal offense. *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202).

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Lopez-Alvarez also requests a remand to the district court for the limited purpose of correcting the judgment under FED. R. CRIM. P. 36 to reflect that he pleaded guilty to attempted illegal reentry into the United States. The Government joins in Lopez-Alvarez's request that we remand for correction of the clerical error. The Government's motion for summary affirmance is granted, and the judgment of the district court is affirmed. We remand to the district court with an instruction to correct the judgment pursuant to FED. R. CRIM. P. 36 to reflect that Lopez-Alvarez pleaded guilty to attempted reentry of a deported alien.

AFFIRMED; MOTION FOR SUMMARY AFFIRMANCE GRANTED;  
REMANDED with instruction.